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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In the Matter of the Application of : Coates, Fredrica V.

Serial No.: 10/773,160

Filed: 02/09/2004

For: Protective Undergarments Having Anchored Pocketed-Sling Structures and
Manufacturing Method Therefor

Examiner: Reichle, Karin M.

Group Art Unit: 3761

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Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

Dear Sir:

REPLY BRIEF

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STATUS OF CLAIMS

Claims 1-19 have been canceled.

Claims 20-23 have been finally rejected.

Claim 23 has been canceled.

Claims 24-27 have been finally rejected.

Claim 28 has been canceled.

Claims 29-31 have been finally rejected.

Claims 32 and 33 have been canceled.

Claim 34 has been finally rejected.

GROUNDS FOR REJECTION TO BE REVIEWED ON APPEAL

Whether Claims 20-22, 24-27, 29-31 and 34 are unpatentable under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Whether Claims 20-21, 24-27 and 29-31 are unpatentable under 35 U.S.C. 103 (a) as being unpatentable over Bernard (US Patent 2,691,983) in view of Wyant (US Patent 5,843,065) and Siudzinski (US Patent 5,772,649).

Whether Claims 20-21, 24-27 and 29-31 are unpatentable under 35 U.S.C. 103(a) as being unpatentable over Bernard (US Patent 2,691,983) in view of Siudzinski (US Patent 5,772,649) and Thompson (US Patent 3,049,124) and Stevens (US Patent 4,892,598).

Whether Claim 34 is unpatentable under 35 U.S.C. 103(a) as being unpatentable over Bernard (US Patent 2,691,983) in view of Wyant (US Patent 5,843,065) and Siudzinski (US Patent 5,772,649) and further in view of Alsop (US Patent 1,977,604) and Brownlee (US Patent 5,360,422).

Whether Claim 34 is unpatentable under 35 USC 103 (a) as being over over Bernard (US Patent 2,691,983) in view of Siudzinski (US Patent 5,772,649) and Thompson (US Patent 3,049,124) and Stevens (US Patent 4,892,598) and further in view of Alsop (US Patent 1,977,604) and Brownlee (US Patent 5,360,422).

ARGUMENT

35 USC 112

The rejection of all of the claims under 35 USC 112, second paragraph, is not understood. Antecedent basis for “the stitches” is found in the fifth paragraph of claim 20. The phrase “around the entire periphery of the anchor layer” merely adds an additional limitation to the previously recited stitches. No additional stitches are referred to by this limitation. Although further amendments are not appropriate at this stage, applicant would be willing to amend this phrase to “the stitches, joining the anchor layer around the its entire periphery of the anchor layer, and all...”. However, such amendment is not believed to be necessary and the claim is believed to be clear.

Basis for the current limitation that the stitches extend around the entire periphery of the anchor layer is found in Figure 1, Figure 1H and Figures 3-3F. Although the claims are limited to the embodiment of Figures 3-3F, the specific discussion of the embodiment of Figures 3-3F is primarily limited to additional features of this alternate embodiment disclosed in the application as filed. The stitching around the entire periphery of the anchor layer is discussed specifically with respect to Figure 1H, and it is clear from the specification that this feature is also present in the embodiment of Figures 3-3F.

35 USC 103

Applicant interprets the Examiner’s Answer of July 20, 2010 as not raising any new grounds for rejection. However, applicant understands the Examiner’s Answer as presenting new reasons for supporting the grounds for the final rejection.

In the Appeal Brief, applicant, for the first time during consideration of this application, noted that Figure 9 of US Patent 2,691,983 (Bernard) was capable of being interpreted in two different ways.

The enlarged view of Figure 9 of Bernard shows a garment that admittedly has three layers.

According to the rejection, the enlarged view of Figure 9 of Bernard is interpreted as showing an outer first part comprising an outer layer and an anchor layer, and an inner second part including a detachable pocketed sling, and would therefore disclose an important structure of Claim 20. In other words the outer part has two layers and the inner part has a single layer.

Applicant asserts, however, that the enlarged view of Figure 9 of Bernard can also be interpreted as disclosing an outer part having one layer and an inner part, detachable from the outer part, having two layers, an interpretation that is incompatible with the structure of Claim 20. Applicant further asserts that the text of Bernard is, if anything, more consistent with this second interpretation. Applicant's basic position remains however, that it is just not clear what the enlarged view of Figure 9 of Bernard shows nor what it would suggest to one of ordinary skill in the art.

In further support for the position that the enlarged view of Figure 9 of Bernard supports the rejection, the point is made in the Examiner's Answer that "the cross hatching of the bottom two layers, i.e. 15a, are the same but both are different than the cross hatching of the top layer, i.e. 16a, and Col. 3, lines 32-34 of '983' ". However, the middle layer of the enlarged view of Figure 9 is not numbered and can be considered to either be a part of layer 15a or layer 16a. Admittedly the hatching of the bottom two layers in the enlarged view of Figure 9 is inclined in one direction and the hatching of the top layer is in another direction. However, the cross hatching in the bottom two layers is mutually offset. Applicant is not aware of any drawing convention in which mismatched hatching inclined in the same direction is used to indicate these are two layers of the same structure. The more common drawing convention is that two layers of the same structure are shown by cross hatching inclined in opposite directions. Therefore based on common drawing conventions, the enlarged view of Figure 9 should show that the two top layers are part of the same structure, i.e. a two-layer inner part, which would be incompatible with the claims. The cited passage on Col. 3, lines 32-34 does not clarify this matter, but merely refers to a sheet 16a, which could have two layers.

When presented with the Bernard reference, one of ordinary skill in the art would have no way of recognizing that Bernard discloses an outer part having two layers. Neither would one of ordinary skill in the art view Bernard as suggesting that the inner

sling should be detachably mounted only to an inner or anchor layer but not to an outer layer of the outer shell or part, so that the sling would be mounted under the inner or anchor layer so as not to leak through the outer layer.

Of course the claims are not rejected only in view of Bernard, but the other references do not disclose the subject matter omitted from Bernard nor do they suggest that Bernard should be interpreted in a manner which would support the rejection. Applicant's remarks in this Reply Brief are limited to Bernard, because only Bernard could arguably supply appropriate subject matter to support the rejection.

Even if the enlarged view of Figure 9 of Bernard is interpreted as supporting the rejection, applicant has previously shown that Bernard would still be insufficient, when combined with the other references, to reject the claims under 35 U.S.C. 103(a). Restatement of those arguments is not believed to be appropriate in this Reply Brief, and applicant has not abandoned any arguments presented in Appeal Brief.

Respectfully Submitted:

A handwritten signature in cursive script, reading "Robert W. Pitts". The signature is written in black ink and is positioned above the printed name and contact information.

Robert W. Pitts

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